



WESTERN CONNECTICUT
HEALTH NETWORK

DANBURY HOSPITAL • NEW MILFORD HOSPITAL

TESTIMONY OF
Dr. William Begg
Western Connecticut Health Network, Inc.

Monday, April 1, 2013

**HB 6687, An Act Concerning Certificates Of Merit and
SB 1154, An Act Concerning The Accidental Failure Of Suit Statute**

Western Connecticut Health Network, Inc. (WCHN) appreciates the opportunity to submit written testimony concerning **HB 6687, An Act Concerning Certificates Of Merit**, and **SB 1154, An Act Concerning The Accidental Failure Of Suit Statute**. WCHN vehemently opposes these bills.

WCHN cares deeply for the patients we serve. As a mission-driven organization, our patients are at the core of every decision we make. We hold the trust of our patients very seriously and we work diligently, day and night, to care for those that need our compassionate expertise regardless of their ability to pay.

Despite our commitment, we all too frequently see firsthand the negative consequences for individuals and families who lack access to care and coverage. Our Emergency Department tirelessly treats individuals who cannot find a physician to care for them because they are uninsured or underinsured. Due to extremely low reimbursements for Medicaid patients, there has been a reduction in the number and availability of physicians in specialty service areas. Our patients therefore experience delays in obtaining follow up treatment because of inadequate coverage and the lack of primary and specialty care. As a result, they present to us, often repeatedly, with more acute and complex illness and injury.

Compounding this issue are rising malpractice costs, combined with a challenging economic environment and a dramatically evolving healthcare delivery and reimbursement system. This combination of barriers makes it imperative for legislators to oppose measures such as HB 6687 and SB 1154.

These measures will surely increase medical malpractice costs and, in turn, healthcare costs. Under Connecticut law, tort cases that involve technical or scientific fields require expert testimony. Medical malpractice cases involve the need to understand sophisticated medical devices and equipment, and intricate processes and procedures conducted by teams of practitioners with years of specialized training. Given the complexity of these cases, the cost to both bring and defend them and the significant expenditure of limited judicial resources to administer them, legislators wisely adopted and established measures in 2005 to ensure that there is a reasonable basis for filing such cases, and that all parties are treated equitably.

For medical liability cases, Connecticut has developed a statutory framework to ensure that the experts used are sufficiently qualified. As part of this system, Connecticut law contains a requirement that a party, or the party's lawyer, perform and certify a pre-suit analysis to ensure that the claim is filed in good faith. This pre-suit process is documented by a "good faith certificate," along with a brief written explanation of the expert's review, stating that the expert believes that there appears to be evidence of medical negligence. Failure to include a good faith certificate with a complaint makes the claim subject to possible dismissal.

The measures currently in place have proven to be effective in assuring that only medical malpractice suits that are grounded in good faith make their way into and remain in the court system. As a direct result, the cost of defending such suits has decreased and our ability to focus our time, attention and resources on our patients has increased.

HB 6687, An Act Concerning Certificates Of Merit, would significantly weaken the good faith certificate process. The bill would dramatically expand the types of professionals permitted to give pre-suit expert opinions to include any person who might be deemed an expert at the time of trial, not experts who, as similar healthcare providers, necessarily have the same specialty or training as the defendant. Such a change would roll back important decisions that this legislative body made in 2005—decisions that created objective criteria for expert qualifications currently used for pre-suit good faith letters. This bill would replace a well-reasoned and balanced system with one that would instead depend on the plaintiff's attorney's subjective assessment of who is a qualified expert.

It's not a stretch to ask, would you want an internal medicine practitioner performing open-heart surgery on you when you knew a specialist was available to perform this life-saving procedure? The honest answer is "no" because it just doesn't make sense. Neither does changing this bill as it's currently written.

In 2005, the General Assembly purposefully made changes to the good faith certificate statute to require that a pre-suit evaluation be performed by a similar healthcare provider. As noted in the legislative history, the goal of those changes was to reduce ongoing problems "caused by plaintiffs misrepresenting or misunderstanding physicians' opinions as to the merits of their action," to "ensure that there is a reasonable basis for filing a medical malpractice case under the circumstances," and to "eliminate some of the more questionable or meritless cases" filed under the standard that existed prior to 2005. This statutory design was examined and upheld by the Connecticut Supreme Court, which afforded appropriate deference to legislators' comments and other testimony found in the legislative record.

HB 6687 would remove the objective standards applicable to qualified experts—standards that guarantee that the healthcare provider knows the standard of care for the defendant provider who treated the condition that is the subject of the complaint. We ask that you preserve this essential element of the pre-complaint inquiry by opposing HB 6687.

In addition, **SB 1154, An Act Concerning The Accidental Failure Of Suit Statute**, would move us further away from realizing the intended goals and impact of the 2005 reform measures because it will dilute, and perhaps eliminate, the force of the good faith certificate law by its express inclusion in Section 52-592. WCHN opposes this because making all failures to comply with the good faith certificate automatically curable as "accidental failures of suit" will render the entire good faith certificate law useless. SB 1154 is essentially an end run around Section 52-190a.

WCHN agrees that the current state of the law in Connecticut, as outlined by our Supreme Court, allows that the accidental failure of suit statute *might* apply to the failure to include a good faith certificate. Connecticut's Supreme Court was precise when it explained that the accidental failure of suit statute applies only in limited circumstances when it intersects with the filing (or failure to file) a good faith certificate. Specifically, and in multiple cases, the Supreme Court has stated that:

“when a medical malpractice action has been dismissed pursuant to § 52–190a (c) for failure to supply an opinion letter by a similar health care provider required by § 52–190a(a), a plaintiff may commence an otherwise time barred new action pursuant to the matter of form provisions of [General Statutes] § 52–592(a) only if that failure was caused by a simple mistake or omission, rather than egregious conduct or gross negligence attributable to the plaintiff or his attorney.”

Morgan v. Hartford Hospital, 301 Conn. 388, 399-400 (2011); quoting Plante v. Charlotte Hungerford Hospital, 300 Conn. 33, 46–47 (2011). SB 1154 far exceeds this relief and would effectively eliminate compliance with the good faith certificate statute. The measures implemented in 2005, which require a meaningful, pre-suit inquiry, should not be dismantled.

WCHN respectfully urges you to oppose both HB 6687 and SB 1154 in order to preserve the integrity of the current measures that have balanced the rights of a patient to file a medical malpractice suite grounded in good faith and the ability to health care providers to focus their time, attention and resources where they should be focused, to wit, serving our patients..

Thank you for your consideration of our position.